

HARBHAJAN SINGH

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v.

SURUHANJAYA PASUKAN POLIS, MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR

b

JAMES FOONG J

[CIVIL SUIT NO: S5-21-08-1997]

24 NOVEMBER 1998

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Dismissal of Assistant Superintendent of Police by Police Force Commission - Whether fair and justified - Time taken in the decision-making process - Whether there was a delay - Whether time was specifically provided for - Public Officer (Conduct and Discipline) Regulations 1993, O. 28 - Failure of commission to inform plaintiff on which three charges he stood dismissed - Whether such disclosure should have been made*

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The plaintiff, an Assistant Superintendent of Police, was dismissed by the 1st defendant, the Police Force Commission ('the commission'). In this instant, the plaintiff claimed injustice and unfairness in the decision-making process of the commission in dismissing him and sought to have his dismissal declared null and void.

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The grounds for his application were: (1) that there was a delay in dismissing the plaintiff which caused the plaintiff worry, anxiety and mental anguish; and (2) that there was injustice and unfairness in the decision-making process of the commission as he was not informed on which of the three charges he had stood dismissed.

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Held:

[1] By virtue of O. 28 of the Public Officer (Conduct and Discipline) Regulations 1993 ('Regulations'), no time is specifically provided for the Disciplinary Authority, ie, the commission, to consider, decide and deliver its decision on disciplinary matters referred to it. Section 54(2) of the Interpretation Acts 1948 and 1967 states that where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

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[2] The time taken in the decision-making process of this case under O. 28 of the Regulations involved two elements. The first was the constitution of the members of the commission, and the second was the administrative machinery of the commission in handling the disciplinary matter.

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- a* [3] As the members of the commission were notable personalities with principle jobs other than their duties as commission members, a general allowance of time must be accorded to them to perform these tasks, some of which must obviously take priority over the plaintiff's case. Thus, the time taken by the commission members to return their views in this case
- b* was done with all convenient speed and as often as the prescribed occasion arose.
- c* [4] The plaintiff's suggestion that the commission should meet more often, or be replaced with members who could spend more time, was not a remedy. Firstly, as the complaint of time constraint was the essence of the excuse of the commission members in the time taken for the delivery of the decision in this case, frequent meetings means more time is required to attend to such meetings. Secondly, the appointment of panel members is laid down by laws and regulations. It is not simple to change them to alternative personalities. Replacing them with lesser mortals may attract
- d* cries of injustice but accepting them comes with the encumbrance of time constraint.
- e* [5] The second component to this decision-making process involved the task of the commission's secretariat in preparing the relevant documents to be sent to the panel members, and thereafter, to process the members' views when returned to them. This area is much associated with the operation of an efficient secretariat. This involves both ability and adequate manpower. In this case, manpower seemed to be the only problem, not the former. But the allocation of manpower is a question for the public service commission to decide. Without much control over this factor, and
- f* since the ability of the secretariat is not being questioned, under the stated condition, this arm of the commission had proceeded with the decision-making process with all convenient speed and as often as the prescribed occasion arose.
- g* [6] On the plaintiff's allegation that he was not informed of which of the three charges he stood dismissed, there was no provision in the Regulations to insist on such disclosure. Therefore, the judiciary must not impose its own methods on administrative or executive officers to do so, otherwise, it is an usurpation.
- h* [Plaintiff's claim dismissed with costs.]

Cases referred to:

Chief Constable of North Wales Police v. Evans HL [1982] 1 WLR 1155 (**refd**)
Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia [1994] 2 CLJ 333 (**refd**)

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Jagan Nath Biswas v. State of West Bengal AIR [1975] SC 1975 SC 1516 (refd) **a**
Local Government Board v. Arlidge [1915] AC 120 (refd)
SK Serajah v. State of West Bengal AIR [1975] SC 1517 (refd)

Legislation referred to:

Interpretation Acts 1948 and 1967, s. 54(2)
Public Officer (Conduct And Discipline) Regulations 1993, O. 28 **b**

For the plaintiff - Karpal Singh; M/s Karpal Singh & Co
For the defendant - Azizah Nawawi; Senior Federal Counsel

Reported by Kavitha Gunasegaran

JUDGMENT **c**

James Foong J:

Introduction And Background

The plaintiff was a police officer until he was dismissed on 29 June 1996. He had joined the force on 1 May 1960 and rose from the rank and file to become an assistant superintendant of police (ASP). This rank he held until his dismissal. **d**

On 30 September 1994 a show cause letter by the 1st defendant was forwarded to him. It contained three charges. Towards this, he made written representation to the 1st defendant on 17 November 1994. After that, he received no decision from the 1st defendant until a letter on 9 August 1996, which informed him that he was dismissed from the force with effect from 29 June 1996. **e**

At the time when he received the letter of dismissal, he had passed his mandatory retirement age which fell on 7 July 1996. In view of the decision by the 1st defendant which was not available then, the plaintiff's services in the force was extended until the decision was made. **f**

Dissatisfied with these set of circumstances which led to his dismissal, the plaintiff now seeks from this court the following: **g**

(1) A declaration that the purported dismissal of the plaintiff *vide* letter dated 9 August 1996 from the 1st defendant is null and void, inoperative and of no consequence or effect and that he is still an officer of the Police Diraja Malaysia. **h**

(2) A declaration that the purported dismissal of the plaintiff with effect from 29 June 1996 is not on the authority of a lawful or valid power.

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- a* (3) A declaration that the letter of dismissal dated 9 August 1996 is invalid in that it does not reflect the charge or charges the plaintiff stood dismissed from service and is on that count null and void, inoperative and of no effect or consequence.
- b* (4) An order that an account be taken of all salaries, emoluments and other benefits due to the plaintiff and the same be paid to him forthwith.
- (5) Interest on the adjudicated, sum ...
- (6) Costs.

c ***Grounds Supporting The Application***

Mr. Karpal Singh, in his consistent practice of economising judicial time, and of which most of us are appreciative, presented only two grounds to support his client's claim. They are:

- d* (i) the delay of one year eight months in deciding to dismiss the plaintiff is unfair; it has, caused the plaintiff worries, anxiety and mental anguish which he is entitled to claim damages;
- (ii) though three charges are listed against the plaintiff in the show cause letter, the 1st defendant never informed him on which of the three charges
- e* he stood dismissed.

Defence

- f* The defence claims that there was no undue delay in the delivery of the decision by the 1st defendant. Time was needed to prepare and compile all relevant documents to be submitted to the disciplinary board members for their consideration. Thereafter, the replies and views had to be received from each panel members before they could be processed. Also, at that material time, there was a great number of disciplinary cases to be dealt with.

g ***Principles***

- h* From the out-set, I am being reminded by the learned plaintiff's counsel that my judicial review must only be confined to "a review of the manner in which the decision was made" and not "to consider whether the decision itself was fair and reasonable"; therefore I am to concern "not with the decision, but the decision making process" – see *Chief Constable of North Wales Police v. Evans HL* [1982] 1 WLR 1155.

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Analysis

Delay

Order 28 of the ‘Public Officer, (Conduct And Discipline) Regulations 1993’ (GO) provides:

If the officer does not furnish any representation within the period specified in subregulation (1), or if the officer furnishes a representation which does not exculpate himself to the satisfaction of the appropriate Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

By the wording of this GO 28 no time is specifically provided for the disciplinary authority, which in this case is the 1st defendant (the commission), to consider, decide and deliver its decision on disciplinary matters referred to it. To fill this void, I was referred to s. 54(2) of the Interpretation Acts 1948 and 1967. It provides as follows:

Section 54(2) of the Interpretation Acts allows:

Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arise.

But what is considered “convenient speed and as often as the prescribed occasion arise”? Mr. Karpal Singh in assisting the court cited a number of cases which have reference to this term or associated with it. Those involving compulsory acquisition of land, I find them inapplicable. There the circumstances are different. Decision in land acquisition case must be made soon after representation for reason that land prices fluctuates between time of hearing and award. This is an important consideration. In our case, the only detrimental factor to the plaintiff is the claim of emotional distress during the period of wait. For this, I find that the propositions expounded in detention cases are more appropriate and offer some guidance. Below are three such propositions which I find relevant.

The first is by Justice Krishna Iyer J in *Jagan Nath Biswas v. State of West Bengal* AIR 1975 SC 1975 SC 1516 where he expressed that:

One should have expected some proximity in time to provide a rational nexus between the incident relied on and the satisfaction arrived at. This Court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction.

- a* Then in *SK Serajah v. State of West Bengal* AIR 1975 SC 1517 Bhagwati J said:

Each case must depend on its own peculiar facts and circumstances.

Again in *Gora v. State of West Bengal* Bhagwati J explained:

- b* The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention.

Bearing these in mind, I shall proceed to analyse it with the facts of this case.

- c* By the nature of the explanation tendered by the 1st defendant, the time taken in the decision making process of this case under this GO 28 involved two elements. The first is the constitution of the members of the commission. The second is the administrative machinery of the commission in handling the disciplinary matter.

- d* On the first, DW1 stressed that there were nine members of the commission. It was headed by the Right Honourable Prime Minister of Malaysia in his capacity as Minister of Home Affairs. Then it had the Inspector-General of Police, as well as the President of the Court of Appeal. The other commission members, though not named, must also be notable personalities.
- e* DW1 proceeded to explain the procedure undertaken. Initially the relevant documents involved in this case were forwarded to the panel members of the commission. Each member must study them and return with their views. There was some time taken here, as elaborated by DW1. Now, is this time taken considered done with all convenient speed and as often as the prescribed occasion arise?
- f* In order to answer this one must examine the principal jobs these commission members were holding at the material time besides their duties in the commission.

- g* To begin with, the Right Honourable Prime Minister is a commission member by virtue of his position as Minister of Home Affairs, which the force is under his charge. But by the nature of his job, he is also the supreme executive of the country. Great demand must be made on his time to attend to the many affairs of state. Though the consideration of the plaintiff's case was certainly one of his duties, but a generous allowance of time must be accorded to him to perform this task in view of his other duties; some of which must obviously take priority over the plaintiff's case.
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- i* Then comes the president of the Court of Appeal. In this area, I can speak confidently, with judicial notice, that His Lordship has to preside over vast number of cases that come before his court. This being his principal job, it

must be attended to first before an allocation of his time to consider the plaintiff's case. *a*

The Inspector General of Police is next. I need not express in detail his principal job specification but, certainly there were other urgent demands than solely to evaluate the plaintiff's case. *b*

As for others, obviously they, too, held principal jobs other than carrying out their duties as commission members. The demand on their time is probably just as pressing as those personalities listed above.

Under these circumstances I am of the opinion that the time taken by the commission members to return their views in this case was done with all convenient speed and as often as the prescribed occasion arise. *c*

Mr. Karpal Singh however feels that this cannot justify against the interest of the plaintiff. He expressed that the commission should meet more often, or one may probably add: replace them with members who can spend time. But this is not really a remedy. Firstly, more frequent meetings means more time is required to attend to such meetings. And is it not the complaint of time constraint the essence of the excuse of the commission members in the time taken for the delivery of the decision in this case? Secondly, the appointment of panel members is laid down by laws and regulations. It is not so simple to change them to alternative personalities. Even if change is permitted, who shall they be replaced with? Is it not the accepted principle that 'a man must be judged only by his peers', and if so, who is no better for an officer of the force to be judged by those persons disclosed earlier. Surely no one can deny that members of the commission, by the position they hold, are not of the highest calibre and integrity to judge an officer, like the plaintiff, in a disciplinary matter. Replacing them with lesser mortals may attract cries of injustice. But, accepting them comes with the encumbrance of time constraint, as exposed above. *d*
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The second component to this decision making process, involved the task of the commission's secretariat in preparing the relevant documents to be sent to the panel members, and thereafter, to process the members' views when returned to them. All these, as explained by DW1 takes time. In addition to this, the commission's secretariat were then handling a great number of disciplinary cases. With these disclosures, can the administrative arm of the commission be faulted in not proceeding to make the decision with all convenient speed. *g*
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- a* To my mind, this area is much associated with the operation of an efficient secretariat. But this involves both ability and adequate manpower. From the narratives of DW1, manpower seems to be the only problem in this case; not the former. But allocation of manpower is a question for the public service commission to decide. Without much control over this factor, and since ability
- b* of the secretariat is not being questioned, I find that under the stated condition, this arm of the commission had proceeded with the decision making process with all convenient speed and as often as the occasion arise.

Dismissal On Which Charge?

- c* From the evidence of DW1, the plaintiff was dismissed based on the 2nd and 3rd charge listed in the show cause letter. It is also revealed that the representation of the plaintiff made against the 1st charge was accepted by the commission. But all these were not told to the plaintiff in his letter of dismissal. Mr. Karpal Singh, of course, seized upon this to claim injustice and unfairness in the decision making process of the commission.
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The learned Federal Counsel, however, rebutted this by declaring that nowhere in the GO requires such disclosures; after all, the plaintiff is still dismissed on two of the three charges.

- e* I agree with the Federal Counsel on this score. As explicitly warned by Chief Justice of Borneo in *Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia* [1994] 2 CLJ 333; [1994] 2 MLJ 114 @ 130: “that we are dealing with general orders that have legislative effect and we must guard ourselves against adding words into them which were never intended.”
- f* With no provision to insist on such disclosure, the judiciary must not impose its own methods on administrative or executive officers to do so otherwise, it is an usurpation – see Lord Shaw in *Local Government Board v. Arlidge* [1915] AC 120. With this I find the plaintiff’s second challenge unsustainable.

Conclusion

- g* Accordingly I hereby dismiss the plaintiff’s claim with costs.

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